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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,722	01/07/2002	Nelson Ruiz-Opazo	50047/006003	3696
21559	7590 02/23/2004		EXAM	INER
CLARK & ELBING LLP			WHITEMAN, BRIAN A	
101 FEDERA			ART UNIT	PAPER NUMBER
BOSTON, MA 02110			1635	

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)			
Office Action Summary		10/040,722	RUIZ-OPAZO, NELSON			
		Examiner	Art Unit			
		Brian Whiteman	1635			
	The MAILING DATE of this communication a	ppears on the cover sheet with the c	correspondence address			
THE - External after - If the - If NO - Failu	ORTENED STATUTORY PERIOD FOR REP MAILING DATE OF THIS COMMUNICATION nsions of time may be available under the provisions of 37 CFR SIX (6) MONTHS from the mailing date of this communication. a period for reply specified above is less than thirty (30) days, a repoind for reply is specified above, the maximum statutory perior to reply within the set or extended period for reply will, by state reply received by the Office later than three months after the mailing the control of the maximum start of the mailing that the mail of the maximum start of the mailing that the maximum statutory period to the maximum statutory period that the maximum statutory period that the maximum statutory period that the maximum statutory period the maximum statutory period that the maximum statutory period the maximum statutory period that the maximum statutory period the maximum statutory period that the maximum statutory period the maximum statutory period that the maximum statutory period the maximum statutory period that the maximum statutory peri	1. 1.136(a). In no event, however, may a reply be tineply within the statutory minimum of thirty (30) day of will apply and will expire SIX (6) MONTHS from the cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).			
earn. Status	ed patent term adjustment. See 37 CFR 1.704(b).					
•=	Responsive to communication(s) filed on 19 December 2003.					
/	<i>'</i> —	nis action is non-final.				
3)⊠						
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.					
Dispositi	ion of Claims					
5)⊠ 6)□ 7)□	4) ☐ Claim(s) 1 and 5 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) ☐ Claim(s) 1 and 5 is/are allowed. 6) ☐ Claim(s) is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or election requirement.					
Applicati	ion Papers					
•	The specification is objected to by the Examination The drawing(s) filed on is/are: a) and a Applicant may not request that any objection to the	ccepted or b) objected to by the line drawing(s) be held in abeyance. See	e 37 CFR 1.85(a).			
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority ι	under 35 U.S.C. § 119					
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 						
Attachmen	t(s)					
2) Notic 3) Infor	ce of References Cited (PTO-892) ce of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO-1449 or PTO/SB/0 or No(s)/Mail Date	4) Notice of Information 5) Other:				

Art Unit: 1635

DETAILED ACTION

Ex Parte Quayle

Priority

The status on page 1 of the instant specification that the instant application is a CON of US application 09/653,030 is incorrect because the instant application is not a CON of US application 09/653,030. The instant application is not a copy of the '030 because tables 1-5 in '030 are missing from the instant specification.

Applicants should amend the cross-reference as follows: -- This application is a CIP of US application 09/653,030 filed on September 1, 2000, now abandoned, which claims priority from Provisional Application 60/152,011 filed on September 1, 1999. --

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: the instant specification is not a copy of US application 09/653,030. The instant specification is a CIP of US application 09/653,030. See MPEP 602.08(a).

Application/Control Number: 10/040,722

Art Unit: 1635

Specification

The amendment filed 12/19/03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Tables 1, page 14; Table 2, page 17; Table III, page 24; Table IV, page 26; and Table 5, page 28 in the substitute specification.

The Tables have support in application 09/653,030 and provisional application 60/152,011. However, applicants did not properly incorporate by reference the specification from either application. Therefore, the substitute specification cannot be entered.

MPEP 201.06(c) recites:

A priority claim under 35 U.S.C. 120 in a continuation or divisional application does not amount to an incorporation by reference of the application(s) to which priority is claimed. For the incorporation by reference to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or transmittal letter-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application.

MPEP 201:06(c) further recites:

Mere reference to another application, patent, or publication is not an incorporation of anything therein into the application containing such reference for the purpose of the disclosure required by 35 U.S.C. 112, first paragraph. In re de Seversky, 474 F.2d 671, 177 USPQ 144 (CCPA 1973). See MPEP § 608.01(p).

Applicant is required to cancel the new matter in the reply to this Office Action.

Application/Control Number: 10/040,722

Art Unit: 1635

Allowable Subject Matter

Claims 1 and 5 are allowed because the claims are free of the prior art of record.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Brian Whiteman whose telephone number is (571) 272-0764.

The examiner can normally be reached on Monday through Friday from 7:00 to 4:00 (Eastern

Standard Time), with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John LeGuyader, SPE - Art Unit 1635, can be reached at (571) 272-0760.

Papers related to this application may be submitted to Group 1600 by facsimile

transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal

Mall 1. The faxing of such papers must conform with the notice published in the Official

Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center number is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (703) 308-0196.

Brian Whiteman

Patent Examiner, Group 1635

SCOTT D. PRIEBE, PH.D

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Page 4

PRIMARY EXAMINER